

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 27, 2011 appellant, then a 57-year-old supervisory quality assurance specialist, filed an occupational disease claim alleging that, as a result of noise exposure during the performance of his federal duties, he suffered a gradual hearing loss.

By letter dated January 6, 2012, OWCP informed appellant that he had not submitted necessary information and gave him 30 days to provide further information and evidence in support of his claim. Appellant did not submit any evidence, either with his claim form or in response to OWCP's letter.

By decision dated February 29, 2012, OWCP denied appellant's claim as he had not established fact of injury. It found that he had not established that the event occurred as described and noted that no supporting medical documentation or other evidence was submitted.

LEGAL PRECEDENT

An employee seeking compensation under FECA² has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,³ including that he is an "employee" within the meaning of FECA⁴ and that he filed his claim within the applicable time limitation.⁵ The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁷

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁸

² 5 U.S.C. §§ 8101-8193.

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁴ *See M.H.*, 59 ECAB 461 (2008); *see* 5 U.S.C. § 8101(1).

⁵ *R.C.*, 59 ECAB 427 (2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

⁶ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁸ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

ANALYSIS

Appellant did not make any statement on his claim form with regard to how he sustained his hearing loss. He simply stated that he sustained gradual hearing loss due to exposure to noise. There is no explanation as to the type of noise, decibel level or hours of exposure. There is no discussion of the duties of appellant's job and how his federal employment placed him in a situation wherein he was exposed to noise. There are no statements from appellant, his supervisor or any colleagues with regard to noise exposure. OWCP informed him of the deficiencies in his claim, but he did not provide the required documentation prior to OWCP's issuance of its decision. Accordingly, the Board finds that appellant failed to meet his burden of proof.

Since appellant failed to establish the first component of fact of injury, it is not necessary to discuss whether he submitted medical evidence sufficient to establish that a medical condition existed and whether this condition was causally the employment factors alleged. However, the Board notes that there is no medical evidence in the record listing a medical diagnosis or explaining how such a diagnosis was related to his federal employment.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment, nor his belief that his condition was caused by his employment is sufficient to establish causal relationship.⁹

After OWCP's decision of February 29, 2012, appellant submitted new evidence in support of his claim. The Board, however, cannot consider this new evidence on appeal because its jurisdiction is limited to the evidence that was before OWCP at the time it issued its final decision.¹⁰ Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 and 10.607.

CONCLUSION

The Board finds that appellant failed to establish that he sustained a hearing loss causally related to factors of his federal employment, as alleged.

⁹ *Walter D. Morehead*, 31 ECAB 188 (1986).

¹⁰ *See* 5 U.S.C. § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 29, 2012 is affirmed.

Issued: December 7, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board